

1 DARIN M. DALMAT (WSBA No. 51384) HONORABLE WHITMAN L. HOLT
2 BARNARD IGLITZIN & LAVITT LLP
3 18 W Mercer St, Suite 400
4 Seattle, WA 98119
5 Tel: (206) 257-6028 / Fax: (206) 257-6048
6 Email: dalmat@workerlaw.com

7

8

9

10

11

12

13

14

15

16

17

18

19

20

UNITED STATE BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

IN RE:
ASTRIA HEALTH, *et al.*
Debtors.¹

Chapter 11
Lead Case No. 19-01189-11
(Jointly Administered)
**WSNA's EMERGENCY MOTION
FOR RECONSIDERATION OF
THE ORDER AUTHORIZING
CLOSURE OF MEDICAL
CENTER**

¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHS Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

MOTION FOR RECONSIDERATION - 1
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**

REQUESTED RELIEF

The Court’s January 8 decision [Docket Entry 874] allowing the Debtors to shutter the SHC Medical Center – Yakima d/b/a Astria Regional Medical Center (Medical Center) will have a profound negative impact on the community that the Medical Center serves, depriving local residents of a trauma center that provides emergency care to those in urgent need. The Court’s closure order will also upend the lives of scores of dedicated professionals employed at the Medical Center. Yet, in a remarkable breach of due process and fundamental fairness, the Court rendered its decision without giving *any* notice or *any* chance to be heard to parties in interest, including the Washington State Nurses’ Association (WSNA), a creditor in this case that serves as collective bargaining representative of the nurses employed at the Medical Center.

Debtors styled their January 3 motion for authorization to close the Medical Center [Docket Entry 867] as an “emergency” motion even though no emergency exists. Worse, Debtors filed their motion under seal precisely in order to keep the employees, patients and the members of the local community in the dark about its plan, and to prevent them from raising any opposition to it in this Court. Because the Medical Center provides services that are not otherwise available in the community, the Court was deprived of adequate information when it determined that the Debtor’s motion was based on a business judgment. Such a secret motion,

MOTION FOR RECONSIDERATION - 2
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**

1 particularly on a critical matter like the closure of a local health center, is anathema
2 to the proper conduct of bankruptcy proceedings and constitutes an outrageous
3 violation of creditor rights. The Court should give WSNA (and any other party in
4 interest whose due process rights were denied), an opportunity to be heard.
5 Accordingly, WSNA respectfully requests that the Court reconsider its closure
6 order and schedule a hearing, as soon as next week, to allow WSNA (and possibly
7 others) to present their arguments and evidence opposing the shutdown.

8 Because the shutdown is expected to commence as early as Monday,
9 January 13, 2020, and, indeed, several nurses have been told today that today is
10 their last day, WSNA respectfully asks the Court to issue an emergency order as
11 soon as possible and no later than January 13, 2020, staying the closure until a
12 hearing can occur, which WSNA requests as early as next week.

13 **STATEMENT OF FACTS**

14 Because of the *ex parte* nature of the proceedings to date, WSNA only
15 learned two days ago of the Debtors' plan to close the Medical Center, and thus
16 has not had adequate opportunity to develop all facts material to the Debtors'
17 closure motion. WSNA nonetheless has a good-faith belief that it could prove the
18 following facts at a hearing.

19 **I. Astria sought the Medical Center's closure without giving WSNA or
20 other parties in interest notice or an opportunity to be heard, and the
Court approved the closure without such notice or opportunity.**

1 On January 3, 2019, the Debtors filed an *ex parte* motion to seal their
2 Emergency Motion to Close the Medical Center. [Doc. 866]. In a deliberate effort
3 to hide the Debtors' plan to close the hospital from certain parties that might
4 object, the sealing motion did not describe even in general terms the relief the
5 Debtors sought in the underlying motion. Like the rest of the public, WSNA had
6 no notice whatsoever that the Debtors intended to close the Medical Center. The
7 only justification the Debtors offered for these secret proceedings was their
8 purported desire not to disrupt operations or file confidential commercial
9 information. *Id.* at 6. They did not as much as attempt to show that less drastic
10 measures, such as redacting any putatively confidential information within the
11 motion, would have been inadequate for their needs.

12 Quite properly, the Official Committee of Unsecured Creditors (Committee)
13 objected to the *ex parte* request. The Committee stressed that acceding to the
14 request would necessarily result in the motion being uncontested—a result that is
15 inimical to the open nature of the bankruptcy process and federal judicial system.
16 Doc. 869 at 2 (citing cases). The Committee also contested that the underlying
17 motion contained any confidential information at all. *Id.* It further showed that the
18 Debtors had failed to explain the disruption they alleged would occur had the
19 creditors and public known of the Debtors' closure plans five days before they
20 were announced as a finality. *Id.* at 5.

MOTION FOR RECONSIDERATION - 4
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**

19-01189-WLH11 Doc 876 Filed 01/10/20 Entered 01/10/20 12:32:18 Pg 4 of 14

1 On January 8, the Court properly denied the Debtors' request to seal their
2 motion for authorization to close the Medical Center [Doc. 874] but it then erred
3 by approving the closure motion the same day. The Court thereby deprived WSNA
4 and other creditors and stakeholders from learning of the closure motion until it
5 was too late for them to be heard on it.

6 WSNA only learned of the Debtors' plan to close the Medical Center on
7 January 8, when the Debtors sent WSNA a notice under the Worker Adjustment
8 and Retraining Notification ("WARN") Act, 29 U.S.C. §2101 *et seq.* Congress
9 enacted the WARN Act, which requires employers to give 60 days advance notice
10 of a shutdown, to give employees an opportunity to prepare themselves and their
11 families before suffering the blow of job loss. Based on this Court's emergency
12 Order, here Astria has announced it is laying off its entire workforce and shutting
13 down starting January 13—5 days after the first notice to nurses who face
14 immediate unemployment. Blatantly disregarding congressional intent, the Debtors
15 here deliberately concealed their shutdown decision from the nurses and other staff
16 at the hospital. It chose instead to blindside them with the January 8 closure
17 announcement, effectively preventing the employees from taking timely steps to
18 prepare themselves for the imminent shutdown.

19 In their January 8 WARN notice, the Debtors make the transparently false
20 claim they gave as much notice as "practicable" because they were trying to obtain

MOTION FOR RECONSIDERATION - 5
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**

1 financing for the Medical Center. Despite the pretense that they were seeking
2 financing until they gave their notice, it is obvious that the Debtors had already
3 made their closure decision by January 3, when they filed their secret motion. In
4 fact (and as discovery in a WARN suit would likely show), they undoubtedly made
5 their decision well before that. Their decision to withhold notice from WSNA and
6 its members until January 8 not only violated federal law, giving rise to post-
7 petition administrative claims, but also constituted bad faith and an utter lack of
8 appreciation for the hardships that the closing will have on the workforce.

9 **II. The sudden closure of the Medical Center will leave the Yakima Valley
10 with a serious gap in the provision of necessary health care.**

11 The unplanned closure of the Medical Center jeopardizes the health of the
12 community that relies on the Medical Center for essential services including
13 emergency room services and open heart surgery. The Debtors' failure to provide
14 adequate notice does not afford adequate time to local resources to absorb the new
15 and increased demands created by the closure of the Medical Center.

16 Current patients and those scheduled for critical surgeries received no notice
17 and no time to secure alternate care. The closure of the Medical Center will also
18 compromise emergency services. The Medical Center's Emergency Room
19 provided services to over 35,000 patients during the 2018 calendar year. The only
20 other hospital offering emergency services in the City of Yakima is Virginia
Mason Memorial Hospital (Memorial or VMMH). The Court has no evidence to

MOTION FOR RECONSIDERATION - 6
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**

1 establish whether Memorial has sufficient staffing or physical space to
2 accommodate a sudden, unexpected surge in emergency room patients as early as
3 next week. The likely absence of such resources will lead to life threatening delays
4 to patients in need of emergent care.

5 The Medical Center is one of two hospitals in Yakima County designated as
6 a Level III Trauma Center.² The presence of a Level III Trauma Center is essential
7 to a community as it ensures of 24-hour immediate coverage by emergency
8 medicine physicians and the prompt availability of general surgeons and
9 anesthesiologists. In addition, a Level III Trauma Center brings life-saving
10 services including the presence of a surgeon in the emergency department upon
11 patient arrival with notification from the field, a 30 minute trauma surgeon and
12 anesthesia response time, a 30 minute radiologist interpretation time, a 30 minute
13 critical care physician response time, a 24 hour on-call orthopedic availability and
14 a 24 hour on-call respiratory therapy availability. The Medical Center's Trauma
15 Center currently provides these services. The Court has not received any analysis

16

17 ² The reduction of Level III trauma center coverage in Yakima County (population
18 of 251,446) from two to one hospital will have a significant impact on the
19 community's access to timely urgent and emergency care. In comparison, Benton
20 County (population of 201,877) has two Level III trauma centers.

1 of the impact to the community due to the closure of the Medical Center and its
2 Trauma Center.

3 Patients requiring life-saving cardiac procedures would lose an essential
4 resource as a result of the closure of the Medical Center. The Medical Center is
5 the only hospital within 100 miles with an open heart surgery program.³ In addition
6 to the direct impact on patients in need of open heart surgery, the Percutaneous
7 Coronary Intervention Program at Memorial currently relies on the open heart
8 surgery capacity at the Medical Center to provide care for patients whose
9 conditions require a level of service that Memorial is unable to meet. The closure
10 of the Medical Center would eliminate the essential back-up relied upon by
11 Memorial and its patients.

12 The Court's decision to allow the closure of the Medical Center without a
13 hearing and without delay has deprived the Court of an opportunity to analyze the
14 impact to the community of the loss of critical medical services.

15 **ARGUMENT AND AUTHORITY**

16 **I. Relief from an order is proper for due-process denials.**

17
18
19 ³ Patients needing emergency open heart procedures would need to be transported
20 to Kadlec Medical Center in Richland Washington, nearly 100 miles away.

1 The standards of Fed. R. Civ. P. 60 apply in bankruptcy proceedings. Fed. R.
2 Bankr. P. 9024. Rule 60 authorizes relief from a judgment or order for a number of
3 reasons, including surprise; newly discovered evidence; an opposing party's fraud,
4 misrepresentation, or misconduct; a void judgment; and any other reason justifying
5 relying. Fed. R. Civ. P. 60(b)(1), (2), (3), (4), (6).

6 In particular, a judgment is void under Rule 60(b)(4) if the proceedings
7 leading to its entry violated due process by "depriv[ing] a party of notice or the
8 opportunity to be heard." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S.
9 260, 271 (2010). *See also Price v. Wyeth Holdings Corp.*, 505 F.3d 624, 631–32
10 (7th Cir. 2007) (default judgment void where notice not provided to affected
11 parties).

12 Similarly, surprise, fraud, and misrepresentation under Rule 60 occur where
13 the movant's conduct prevents "the losing party from fully and fairly presenting
14 his case or defense." *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir.
15 1978) (citing *Toledo Scales Co. v. Computing Scale Co.*, 261 U.S. 399, 421
16 (1923)). The Rule "is aimed at judgments which were unfairly obtained, not at
17 those which are [merely] factually incorrect." *Id.* *See also Abrahamsen v. Trans-*
18 *State Exp., Inc.*, 92 F.3d 425, 428 (6th Cir. 1996) (failure to disclose evidence can
19 constitute "misconduct" under Rule 60(b)(3)).

20 **II. The Closure Order deprived WSNA of any opportunity to be heard and is
thus void for want of due process.**

MOTION FOR RECONSIDERATION - 9
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**

1 Due process fundamentally requires notice to interested parties of the
2 pendency of an action and a meaningful opportunity to present objections. *Mullane*
3 *v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Notice must
4 “afford a reasonable time for those interested to make their appearance.” *Id.*
5 Process “which is a mere gesture is not due process.” *Id.* at 315.

6 The purpose of due process is to enable affected individuals to prepare
7 adequately for an impending hearing. *Memphis Light, Gas & Water Division v.*
8 *Craft*, 436 U.S. 1, 14 (1978).

9 The requirements of due process apply fully in bankruptcy proceedings. *In*
10 *re Center Wholesale, Inc.*, 759 F.2d 1440, 1448–51 (9th Cir. 1985) (cash collateral
11 order was void where notice of hearing did not afford due process). Indeed,
12 because a Chapter 11 debtor enjoys the protections of the bankruptcy system and
13 the significant benefits of possible debt relief, its actions should be *more*
14 transparent and *more* subject to objections of affected creditors than would be
15 required of a solvent company operating outside of bankruptcy.

16 There can be no serious question that the approximately 140 nurses
17 represented by WSNA who work for the Medical Center have direct and
18 significant interests in the decision to close the Center and lose their jobs.

19
20
MOTION FOR RECONSIDERATION - 10
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**

1 The Debtors' sealed motion, by design, deprived them of any meaningful
2 opportunity to prepare for or participate in the January 8, 2020, hearing on the
3 closure. The closure order thus deprived them of due process and is void.

4 Given an opportunity to present evidence, WSNA would show that the
5 Debtors' exercise of business judgment was based on inadequate information—a
6 defect that the Debtors themselves acknowledge would render their proposal infirm
7 and subject to judicial intervention. Doc. 867 at 22 (citing *In re Farmland Indus.,*
8 *Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003)). In particular, WSNA would
9 show that the Medical Center provides valuable, medically necessary services that
10 are not provided by other health care providers in the region. *Supra* at 6-8.

11 **III. The Debtors failed to demonstrate that closure is necessary now.**

12 The Debtors argue that closing the Medical Center is an appropriate exercise
13 of their business judgment because it has been operating at a loss, requiring weekly
14 cash infusions. Doc. 867, ¶ 4. Although the Debtors baldly state that this financial
15 situation creates a financial drag on Astria's other hospitals, Sunnyside and
16 Toppenish, they offer neither evidence nor argument to show that this situation is
17 anything new or why the closure could not be delayed, at least for a brief period to
18 allow WSNA to present its arguments and evidence at a hearing.

19 The Debtors do attempt two explanations for the timing of the closure, but
20 neither has merit. First, they point to false rumors about the Medical Center's

1 staffing levels and closure plans. *Id.*, ¶¶ 7–8. Remarkably, the Debtors identify no
2 efforts they undertook to respond to those rumors. To justify a hospital closure
3 based on then-false rumors of a hospital closure is a peculiarly perverse form of
4 circular logic as well as a complete abdication of managerial responsibility.

5 Second, they rely on the recent Washington Department of Health Ruling
6 granting VMMH an elective PCI program. *Id.*, ¶ 9. Yet, as explained above,
7 VMMH’s new PCI program is not alone enough to ensure the Yakima Valley will
8 not suffer a dramatic loss of access to health care upon the closure of the Medical
9 Center.

10 Ultimately, the Debtors’ uncontested explanations have no substance. At a
11 minimum, this Court should require the Debtors to submit their proffered
12 explanations to cross-examination and contrary evidence by WSNA and possibly
13 other parties who were denied due process, so that it may decide the issue on a full
14 and fair record.

15 **CONCLUSION**

16 WSNA respectfully, but strenuously, asks this Court to reconsider its
17 Closure Order and set a hearing, as soon as next week, so that the matter can be
18 determined in open court where all interested parties have had a fair opportunity to
19 be heard. The Bankruptcy Rules and U.S. Constitution require nothing less.

20
MOTION FOR RECONSIDERATION - 12
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**

1 RESPECTFULLY SUBMITTED this 10th day of January, 2020.

2 /s/ Darin M. Dalmat

3 Darin M. Dalmat, WSBA No. 51384

4 **BARNARD IGLITZIN & LAVITT LLP**

5 18 W Mercer St, Suite 400

6 Seattle, WA 98119

7 (206) 257-6028

8 (206) 378-4132

9 dalmat@workerlaw.com

10 *Attorney for WSNA*

11
12
13
14
15
16
17
18
19
20
MOTION FOR RECONSIDERATION - 13
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**

DECLARATION OF SERVICE

I, Esmeralda Valenzuela, declare under penalty of perjury under the laws of the State of Washington, on the date set forth below I filed the foregoing document using the Court's CM/ECF system, which will automatically provide notice to all registered parties.

DATED this 10th day of January, 2020, at Seattle, Washington.

By: 
Esmeralda Valenzuela, Paralegal

DECLARATION OF SERVICE
Case No. 19-01189-11

18 WEST MERCER ST., STE. 400 **BARNARD**
SEATTLE, WASHINGTON 98119 **IGLITZIN &**